

CASE#: **09-C-566**

Sub Code:

Date Opened: 08/06/2009

JUDGE: *UNKNOWN

Plaintiff: **GATEWAY TOWNE CENTRE LLC**
vs
Defendant: **FIRST UNITED BANK AND TRUST**

Pro Attorney: J B. EDWARDS

Def Attorney:

<u>Page</u>	<u>Date</u>	<u>Memorandum</u>
1	08/06/2009	Complaint Filed
2	08/06/2009	Process issued, Cert. Mail
3	08/12/2009	Cert/Mail green card singed by Robert Kurtz 8-11-09

<u>Earned</u>	<u>Collected</u>
145.00	145.00
20.00	20.00
.00	.00
165.00	165.00



SUMMONS

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

GATEWAY TOWNE CENTRE, LLC

PLAINTIFF,

VS.

CIVIL ACTION NO. 09-C-566

**FIRST UNITED BANK AND TRUST
C/o Robert W. Kurtz, President
19 S Second Street
Oakland MD 21550**

DEFENDANT.

To the above-name Defendants:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon, **J. BRYAN EDWARDS**, plaintiff's attorney whose address is **1200 Dorsey Avenue, Suite II, Morgantown WV 26501** an answer including any related counterclaim you may have to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within **20** days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled action.

DATED: August 6, 2009


JEAN FRIEND, CLERK

MONONGALIA CO. CIRCUIT COURT

BY 

DEPUTY CLERK

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

GATEWAY TOWNE CENTRE, LLC

Plaintiff,

v.

Civil Action No. 09-C-566

FIRST UNITED BANK AND TRUST,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

1. This Complaint for Declaratory Judgment is brought pursuant to the provisions of West Virginia Code § 55-13-1, et seq., the Uniform Declaratory Judgments Act, for the purpose of having the Court declare and adjudicate issues of payment under a Purchase and Option Agreement with respect to the Plaintiff's claims for payment for a portion of property sold to the Defendant that has not been paid for by the Defendant.

2. The Plaintiff is a limited liability company organized and operated pursuant to the laws of the State of West Virginia, and at all times relevant hereto doing business in Monongalia County, West Virginia.

3. The Defendant, First United Bank and Trust (hereinafter "First United"), is an Maryland-based bank which, at all times pertinent to this action, has engaged in the business of banking and has operated branches of its bank in the State of West Virginia, and at all times relevant hereto did business in Monongalia County, West Virginia.

4. On or about March 16, 2004, the Plaintiff and the Defendant entered into a *PURCHASE AND OPTION AGREEMENT* wherein the Plaintiff agreed to sell and the Defendant agreed to purchase a parcel of property to construct a bank at a development of the Plaintiffs. A copy of the Purchase and Option Agreement is attached hereto as "Exhibit A".

5. As is set forth in said *PURCHASE AND OPTION AGREEMENT*, specifically on pages 6 and 7, Parcel V(a) the Defendant was to pay \$1,190,000.00 for said parcel. Parcel V(b) was to be purchased by the Defendant for a price of Twenty-Two Dollars and Ninety-six Cents (\$22.96) per square foot of area after a determination had been made by the Plaintiffs as to the area necessary to satisfy the requirements of any governmental agencies as to the issuance of the necessary permits.

6. The Plaintiffs, in accordance to the terms of the *PURCHASE AND OPTION AGREEMENT*, provided the Defendants with a survey and description of the area remaining in Parcel V(b) and Defendant was to purchase said Parcel V(b) within twenty (20) days of receiving said proposed Deed and Plat of Survey.

7. On or about September 15, 2008, the Plaintiff provided the survey and description of Parcel V(b) to the Defendant, showing an area of 3,730.56 sq.ft. A copy of said survey is attached hereto as "Exhibit B".

8. To date the Defendant has refused to purchase Parcel V(b) from the Plaintiffs, as required under the *PURCHASE AND OPTION AGREEMENT*.

9. The Plaintiff has complied with all its obligations under the *PURCHASE AND OPTION AGREEMENT*.

10. This Court has the power to declare whether Defendant First United is required under the terms of the *PURCHASE AND OPTION AGREEMENT* and West Virginia law to make payment for the Plaintiff's claim.

11. Accordingly, the Plaintiff hereby seeks a declaratory judgment from this Court, declaring that the Defendant owes Plaintiff Eighty Five Thousand Six Hundred Fifty Three Dollars and sixty-six cents (\$85,653.66)¹ for the amount owed for Parcel V(b), including interest thereon.

¹ 3,730.56 sq.ft. x \$22.96 per sq. ft. = \$85,653.66

12. The Plaintiff also seeks a declaratory judgment from this Court, declaring that Defendant First United has breached its contractual obligations owed to the Plaintiff under the *PURCHASE AND OPTION AGREEMENT* and is, therefore, liable to the Plaintiff for all expenses incurred by the Plaintiff in proving its claim, including expert fees and reasonable attorney fees.

WHEREFORE, Gateway Towne Centre respectfully requests the following relief:

- 1) A declaration that the First United breached the *PURCHASE AND OPTION AGREEMENT*;
- 2) A declaration that First United is required by the *PURCHASE AND OPTION AGREEMENT* to make payment to the Plaintiff in the amount Eighty Five Thousand Six Hundred Fifty Three Dollars and sixty-six cents (\$85,653.66), plus all prejudgment and post judgment interest;
- 3) A declaration that First United has breached its contractual obligations owed to the Plaintiff by refusing to pay what was required under the *PURCHASE AND OPTION AGREEMENT* and is, therefore, liable to the Plaintiff for all costs and expenses incurred by the Plaintiff in providing the claim, including expert fees and reasonable attorney fees;
- 4) A declaration entitling the Plaintiff to any other relief the Court deems just and proper.

Respectfully submitted,
Plaintiff,
By Counsel



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